

DECISIONTHE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

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FILE: B-196625

DATE: February 20, 1980

MATTER OF: Ardeth D. Potts - Claim for Backpay - Detail
to Higher-Graded Position

DIGEST: Employee claims backpay for period during which she contends that she performed duties assigned to higher-graded position. Claim may not be paid because employee cannot be promoted to position which has not been classified. Claim is in nature of appeal of job classification and alleged improper position classification could have been appealed to agency and Civil Service Commission.

This decision concerns the appeal of Ms. Ardeth D. Potts of our Claims Division settlement dated August 10, 1979 (Z-2733930). The settlement denied her [claim for a retroactive temporary promotion and backpay]. For the reasons stated below we sustain the settlement.

Ms. Potts occupied a GS-5 position classified as a Procurement Clerk for the Department of the Air Force at Norton Air Force Base, California. She states that she performed the higher-graded duties of a GS-7 Contract Specialist during the period July 10, 1972, through February 11, 1974. Thus, she contends she is entitled to a temporary promotion and backpay on the basis of our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), and 56 id. 427 (1977). We held therein that employees officially detailed to established higher-level positions for more than 120 days without proper sanction are entitled to retroactive temporary promotions with backpay beginning with the 121st day of the detail until the detail is terminated.

In the present case, it is indicated that no established classified GS-7 Contract Specialist position existed in the agency, except for a brief period from October 24, 1973, to January 25, 1974. The agency and our Claims Division denied Ms. Potts' claim on the basis that there was no established, classified position at the GS-7 level to which she could have been detailed. We agree.

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Ms. Potts bases her appeal on her contention that the evidence shows a de facto position was created despite management failure to officially establish a position. There are innumerable instances in the Government service where employees perform certain duties of a higher classification, but as a general rule an employee is entitled only to the position to which he or she is actually appointed, regardless of the duties performed. When an employee performs duties normally reserved to employees in a grade level higher than the one held, the employee is not entitled to the salary of the higher grade level until such time as the employee is promoted to that grade. Dianish v. United States, 183 Ct. Cl. 702 (1968); 55 Comp. Gen. 515 (1975).

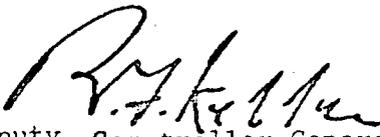
This principle was confirmed in United States v. Testan, 424 U.S. 392 (1976), a case involving the issue of entitlement of an employee to backpay for errors in position classification levels. The Supreme Court ruled that an employee is only entitled to the salary of the position to which appointed and that neither the Classification Act nor the Back Pay Act creates a substantive right in the employee to backpay for the period of any claimed wrongful classification. Ronald J. Beach, B-195480, November 8, 1979. Ms. Potts could not have been promoted to a position which was not classified. Hubert J. Buteau, B-187287, May 13, 1977.

Ms. Potts' claim that she performed higher-graded duties in an unclassified position is in the nature of an appeal of her job classification. Therefore, she should have appealed the alleged improper position classification to her agency and the Civil Service Commission. See 5 C.F.R. Part 511, subpart F (1974).

Although a GS-7 position was created in October 1973, it was cancelled in January 1974. Thus, the position was in existence less than the required 120-day period necessary for a retroactive temporary promotion under the rationale of our Turner-Caldwell decisions, supra. Helen Mansfield, B-192765, May 9, 1979.

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Accordingly, we sustain our Claims Division determination denying Ms. Potts' claim for retroactive promotion and backpay.


Deputy Comptroller General
of the United States